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CLIENT/MATTER NUMBER
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May 28, 2009

VIA ECF

The Honorable Kathleen Tomlinson
U.S. Magistrate Judge, E.D.N.Y.
100 Federal Plaza
Central Islip, New York 11722

Re: Chord Associates et al. v. Protech 2003-D et al., Case No. 07-cv-5138

Dear Judge Tomlinson:

Defendants respectfully request a conference to resolve certain issues raised in Defendants' pending discovery motions (Docket Nos. 86, 90, 91, 92 and 93).

All of the issues in Defendants motion to compel addressed to privilege (Docket No. 86) remain outstanding.

As to Defendants' motion to compel Plaintiffs to produce documents and appear for deposition (Docket No. 90), Plaintiffs continue to withhold most of the documents at issue and have not produced the "handful" they said they would produce. Since the motion was filed, Plaintiffs have agreed to appear for deposition on June 9, 10 and 11. Defendants have agreed to take the depositions on those dates given the June 12 cut off date for fact discovery, but they seek to preserve all rights in connection with Plaintiffs' failure to produce documents.

As to Defendants' motion to compel Roland Conde to produce documents and for sanctions (Docket No. 91), Plaintiffs responded on May 19 that Mr. Conde would be producing documents "very quickly." Since the motion was filed, Mr. Conde agreed to appear for deposition on June 2 and 3, but he still has not produced any documents. As with the depositions of Plaintiffs, Defendants have no choice but to proceed with this deposition, but seek to preserve all rights in connection with Mr. Conde's failure to produce documents.

As to Defendants' motion to compel Richard and Maureen Saepia to produce documents and appear for deposition (Docket No. 92), Plaintiffs responded that the Saepias have no documents. Since the motion was filed, the Saepias have agreed to appear for deposition on June 1. As with the other motions, Defendants seek to preserve all rights with respect to the Saepias' failure to produce documents, and in particular, with respect to the lack of credibility of the claim that they have no documents.

As to Defendants' motion to compel Mr. Kaplan to produce documents and appear for deposition (Docket No. 93), all issues remain outstanding.

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In light of the urgency of these issues, we respectfully request your Honor's ruling on the motions to the extent the issues remain unresolved, and further request your Honor's clarification that Defendants' rights with respect to the privilege and document issues are reserved. There are in practicality only two open days left in the schedule for depositions, which we are attempting to fill with previously subpoenaed third parties.

Respectfully,

A handwritten signature in cursive script that reads 'Catherine McGrath' followed by a small 'PEK' in the right margin.

Catherine McGrath

cc: Andrew Donner, Esq. (via ECF and electronic mail)